NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Loyalhanna Health Care Associates d/b/a Loyalhanna Care Center, A Pennsylvania Limited Partnership and Cynthia A. Clark and Erica J. Lewis, and Melanie M. Fritz. Cases 6–CA–28609, 6– CA–28676, and 6–CA–28676–2

August 23, 2010

## SUPPLEMENTAL DECISION AND ORDER

## BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER AND AND HAYES

On June 30, 2008, the two sitting members of the Board issued a Supplemental Decision and Order in this proceeding, which is reported at 352 NLRB 863. Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the Third Circuit, and the General Counsel filed a cross-application for enforcement. On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. Thereafter, the court of appeals remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.<sup>2</sup>

The Board has considered the judge's decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order to the extent and for the reasons stated in the decision reported at 352 NLRB 863, which is incorporated herein by reference.<sup>3</sup>

Dated, Washington, D.C. August 23, 2010

Wilma B. Liebman,	Chairman
Peter C. Schaumber,	Member
Brian E. Haves.	Member

## (SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>&</sup>lt;sup>1</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

<sup>&</sup>lt;sup>2</sup> Consistent with the Board's general practice in cases remanded from the courts of appeals, and for reasons of administrative economy, the panel includes the members who participated in the original decision. Furthermore, under the Board's standard procedures applicable to all cases assigned to a panel, the Board Members not assigned to the panel had the opportunity to participate in the adjudication of this case at any time up to the issuance of this decision.

<sup>&</sup>lt;sup>3</sup> Member Hayes does not agree with Board precedent broadly holding that an employee's service as the highest-ranking employee present on duty in a workplace is insufficient by itself to demonstrate supervisory status. He agrees with the court's statement in Glenmark Associates, Inc. v. NLRB, 147 F.3d 333, 341 (4th Cir. 1998), that "[w]e cannot fathom the Board's position that for more than two-thirds of a week at a nursing home providing twenty-four hour care, where patient conditions can change on a moment's notice, there is no one present at the facility exercising independent judgment regarding proper staff levels and patient assignments." Accordingly, at least in a workplace requiring immediate judgmental responses to various changed circumstances, Member Hayes would find that an employee's service for a substantial part of the workday as the highest-ranking employee present on duty is sufficient proof of 2(11) supervisory authority responsibly to direct and to assign work to others, absent specific evidence to the contrary. For institutional purposes, however, he joins his colleagues in applying extant precedent to affirm the judge's findings that the nurse managers in this case were not supervisors, and that the Respondent violated Sec. 8(a)(1) by actions taken against them.